

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7147 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD Sd/-

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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MOHMAD JAMIL MOHMAD IBRAHIM

Versus

WESTERN AUTO SPARES

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Appearance:

MR ASHWIN H ACHARYA for Petitioner

MR DEEPAK V PATEL for Respondent No. 1

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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 22/10/1999

ORAL JUDGEMENT

1. Learned Advocate Shri Ashvin H. Acharya  
appearing on behalf of the petitioner workman and learned  
advocate Shri Dipak V. Patel appearing on behalf of the  
respondent company. At the time when the matter is  
called out for final hearing, no one is appeared on  
behalf of the petitioner workman and I have heard learned  
advocate Shri Dipak V. Patel on behalf of the respondent

company.

2. The brief facts of the case is that ;

The present petitioner workman was working with the respondent company about 2.1/2 years and his service was terminated w.e.f. 4/10/79. The said termination order was challenged by the petitioner workman before the Labour Court, Ahmedabad in Reference No.66/79 and the said reference has been dismissed for default by the Labour Court, Ahmedabad vide his order dtd. 5/1/82. The Labour Court has considered that when the reference was called out, the workman was absent, and was not remained present before the Court for establishing his case, and therefore, the reference has been dismissed for default in absence of petitioner workman. Thereafter, the petitioner workman had filed restoration application NO. 108/82 in Reference No.66/79, under the provisions of Rule 26 (A) of the Gujarat Rules, 1966. According to the petitioner workman, the said reference has been dismissed for default which came to know on 25/3/82 when he received a copy of the award from Gandhinagar. The respondent company had filed written statement at Ex.5 in restoration application and denied all the averments and allegations made by the petitioner workman in the said application. The petitioner workman has pointed out that there was a delay in filing the said application because he was fallen down from his Cycle and therefore, he was under treatment of born setter from 1/5/82 to 18/8/82. That he was not able to walk or sit because of the accident. When he was able to move out he filed the application of 20/8/82. He had also filed affidavit in support of said version. According to the respondent Company, the said defence was forged and got up by the petitioner workman and delay should not have to be condoned. After considering the submissions of both the sides, the Labour Court has come to the conclusion that the petitioner workman had failed to file statement of claim in original reference in spite of fact that several adjournments were given by the Court. From the perusal of the record, it appears that the applicant himself was negligent and not active for his case in original reference. If the advocate of the workman did not give him any intimation of date of hearing, he could have contacted him or in the Court he could have inquire as to where is case was stand. It seems that the applicant was total negligent from his case and also in present application, the applicant was not exact and careful for the averments made by him, even an application for condoning the delay has been filed after a period of 4 years from the date of filing of the main application

Ex.1 and there was delay of about 8 months. The Labour Court, after considering the entire record, came to the conclusion that looking to the facts stated above, this is not a fit case where the applicant should have been given further liberty and therefore the said restoration application was dismissed on 31/3/87.

3. The said exparte award and order on restoration of application is challenged by the present workman before this Court by way of filing the present petition, this petition was admitted on 11/6/93 by this Court.

4. Learned Advocate Mr. Dipak V. Patel appearing on behalf of the respondent company has pointed out that the petitioner workman who remained absent in original reference inspite of various notices were served to him and similarly in restoration application also there was a gross delay and the workman was remained negligent and the Labour Court while rejecting the restoration application has elaborately considered all the evidence and rejected the application. Therefore, according to Mr. Patel, no error is committed by the Labour Court either in passing exparte award or rejecting the restoration application. Mr. Patel further submitted that this Court cannot act as an Appellate Authority and cannot reappreciate the same evidence again which was lead before the Labour Court, and therefore, there is no infirmity in the award and hence, this petition requires to be dismissed.

5. I have considered the submissions of Mr. Patel. The Labour Court while rejecting the restoration application has discussed the evidence and facts in details and come to the conclusion that the petitioner workman was negligent and not attended the proceedings before the Labour Court inspite of notices were received by him from the Labour Court. The Labour Court has further considered that there was a delay which was not explained properly by the petitioner workman and not only that but before the Labour Court no statement of claim was filed in original reference by the petitioner workman. The reference which was referred for adjudication on 25/2/79 and exparte order was passed on 5/1/82 and during the 3 years's period, the petitioner workman has not taken even care to submit his justification or statement of claim in support of dispute which was raised by him, and therefore, the Labour Court has rightly passed exparte award and rejected the restoration application. The Labour Court has not committed any error and there is no infirmity in the award and order passed by the Labour Court. This Court

is having very limited powers under Articles 226 and 227 of the Constitution of India and cannot act as Appellate Authority and cannot reappreciate the same, in view of the two decisions of Apex Court reported in 1998(1) GLR 17 AND 1998 AIR Supreme Court Weekly page 1840, therefore, there is no merits in the present petition and it deserves to be dismissed, and hence, this petition is dismissed accordingly.

Notice discharged. No order as to costs.

Sd/-

Date : 22/10/1999. (H.K. RATHOD,J.)

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